IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

A. O. No. 663 of 2006

Sheth Developers Pvt. Ltd. . ... Appellant
vs,.
Slum Rehabilitation Authority and anr... ... Respondents

Mr. Y. S. Jahagirdar Sr. Counsel with Mr. M.D.Siodia and Ms. D.S. Retiwala for appellant.
Nr. Prachi P. Rane i/b. M/s. Utangale & Co. for respondent no.1.
Mr. S. Surana for respondent no.2.

CORAM: D. G. KARNIK **J.**

DATE: 25th September 2006

P.C.:

1. Heard learned counsel for the parties.

2. By consent, the appeal is heard finally at the stage of admission.

3. This appeal is directed against the order dated 5th August 2006 passed by the learned judge of the City Civil Court in Motion No. 3044 of 2006 declining to grant ad interim relief.

4. While considering the prayer for ad interim relief the learned Judge prima facie considered the maintainability of the suit.

He was of the view that in the absence of notice under section 164 of the Maharashtra Cooperative Societies Act (for short "the Act"), the suit was prima facie is not maintainable. He, therefore, observed that no prima facie case was made out and declined to grant ad interim relief and made the motion returnable on 25th august 2006.

5. Mr. Jahagirdar, learned senior counsel for the appellant submitted that the observations made by the learned judge that the suit was not maintainable in the absence of notice under section 164 of the Act may come in the way of the appellant at the hearing of the motion. In view of the decision of the Supreme Court in Shri **Shiv Kumar Chadha vs. Delhi Municipal Corporation & ors.**, reported in (1993) 3 SCC 161 the learned Judge was required to consider even at the stage of consideration of ad interim relief whether the suit was prima facie maintainable. The opinion formed by the learned judge that the suit was not maintainable in the absence of notice under section 164 of the Act is only a prima facie opinion formed by him and can not be said to be a final finding. The very fact that the learned judge has not dismissed the motion but has made it returnable itself shows that it was a prima facie observation made by him only for the purpose of considering whether ad-interim relief should be granted or not. If the learned judge had formed the final opinion that the suit was not maintainable he could have

dismissed the suit or in any event would have dismissed the motion without making it returnable on 25th August 2006. It is however, clarified that the observations made by the learned judge in his order dated 5th August 2006 that the suit was maintainable in the absence of notice under section 164 of the Act is only a prima facie observation and would not affect the right of the plaintiff at the time of hearing of the motion or the suit to show and satisfy the court about its maintainability. The learned judge would be entitled to consider at the final hearing of the motion or the suit whether a strong prima facie case is made out, including on the question of maintainability of the suit. In view of these observations learned counsel for the appellant does not press the appeal. Appeal is accordingly disposed of.

6. Mr. Jahagirdar makes a request that the trial court may be directed to dispose of the motion expeditiously. The appellant is free to move the trial Court with such prayer which would be considered by the court on its own merits taking into consideration the pendency of the matters before it.

(D.G. KARNIK J.)